

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

Master File No. 12-md-02311
Honorable Marianne O. Battani

In Re: ALL AUTO PARTS CASES

THIS RELATES TO:

All Dealership Actions

**DEFENDANTS' OPPOSITION TO
AUTO DEALER PLAINTIFF BECK MOTORS INC.'S MOTION TO BE
DROPPED AS A NAMED PLAINTIFF AND PROPOSED CLASS REPRESENTATIVE**

CONCISE STATEMENT OF THE ISSUES PRESENTED

1. Whether, contrary to the Special Master's August 3 Ruling, Auto Dealer Plaintiff Beck Motors Inc. ("Beck") should be permitted to withdraw without complying with this Court's Orders of January 7, 2015 and May 12, 2015?

Answer: No.

STATEMENT OF CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Cases

In re Vitamins Antitrust Litigation, 198 F.R.D. 296 (D.D.C. 2000).

In re Wellbutrin XL Antitrust Litigation, 268 F.R.D. 539 (E.D. Pa. 2010).

Rulings

Amended Ruling of Special Master on Defendants' Motion To Enforce the January 7 and May 12, 2015 Stipulated Discovery Orders Against Holzhauer Auto & Truck Sales, Inc. and To Strike its Purported Notice of Withdrawal (12-cv-00102, ECF No. 332) (August 3, 2015).

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ARGUMENT

Beck Motors, Inc. (“Beck”) has identified nothing in its motion to distinguish its request from the prior motion by Plaintiff Holzhauser Auto Truck and Sales Inc (“Holzhauer”). Like Holzhauser, Beck has been a named plaintiff for more than three years. Like Holzhauser, Beck has produced nothing in response to the Court’s Stipulated Orders of January 7 and May 12, 2015. Under identical circumstances, the Special Master granted Defendants’ motion to require that Holzhauser must comply with its discovery obligations under the January 7 and May 12 Orders notwithstanding any motion to withdraw. *See* Amended Ruling of Special Master on Defs.’ Mot. To Enforce the Jan. 7 and May 12, 2015 Stip. Disc. Orders Against Holzhauser Auto & Truck Sales, Inc. and to Strike Its Purported Notice of Withdrawal at 3 (12-cv-00102, ECF No. 332) (“Amended Ruling”). The same outcome should be obtained here.

Beck’s arguments are identical to arguments Holzhauser made in attempting to avoid its discovery obligations,¹ all of which the Special Master rejected in the Amended Ruling. Beck cites to the same cases as Holzhauser and in some places even uses the exact same language from Holzhauser’s brief. Like Holzhauser, Beck has not provided any suggestion of why it seeks to withdraw (other than to avoid its discovery obligations), nor provided any excuse for why it has failed to date to comply with its discovery obligations. In short, Beck has articulated nothing to distinguish its request from Holzhauser’s, and has given the Special Master no reason why the outcome here should not be same as it was with respect to Holzhauser.

Beck’s limited production of documents back in 2014 does not distinguish it from Holzhauser with respect to noncompliance with the January 7 and May 12 Orders. Beck Mem. at 2.

¹ Compare Beck Mem. at 2-4, with Automobile Dealer Plaintiff Holzhauser Auto and Truck Sales Inc.’s Opp. To Defs.’ Mot. to Enforce the Jan. 7 and May 12, 2015 Stipulated Disc. Orders Against Holzhauser Auto & Truck Sales, Inc. and to Strike Its Purported Notice of Withdrawal at 5-6 (12-cv-00102, ECF No. 323).

These documents are primarily vehicle invoices identifying the manufacturer, quantity, model, and model year for vehicles it acquired. Beck has produced nothing related to its *sales* of these vehicles, and these invoices cannot substitute for the data and other documents Beck stipulated, and was ordered, to produce pursuant to the January 7 and May 12 Orders. Indeed, Auto Dealers themselves argued, with respect to their own subpoena to OEMs, that invoices were no substitute for “data that can be easily processed and analyzed by an expert.” *See* Auto Dealership Pltfs.’ Opp. to Direct Purchaser Pltfs.’ Motion to Limit Uniform Subpoena to OEMs at 2 (12-cv-02311, ECF No. 980).

The Special Master also should not entertain Beck’s attempts to re-litigate the need, relevance, and burden of Beck’s production of data and documents. Beck Mem. at 4. These issues have been previously raised, briefed, and resolved by Beck’s agreement to produce these data and documents under the January 7 and May 12 Orders. Likewise, they are the same arguments that Holzhauer made in its opposition to Defendants’ Motion to Compel Holzhauer to comply with the January 7 and May 12 Orders, notwithstanding any motion to withdraw. The Court ruled that Holzhauer is required to comply with those orders, and Beck should be as well.²

CONCLUSION

For the foregoing reasons, the Special Master should deny Beck’s Motion to Withdraw to the extent that Beck seeks to withdraw without complying with its existing discovery obligations.

² In further response to Beck’s motion, Defendants incorporate the arguments they made in their briefs pertaining to Holzhauer. *See* Defs.’ Mot. To Enforce the Jan. 7 and May 12, 2015 Stip. Disc. Orders Against Holzhauer Auto & Truck Sales, Inc. and to Strike Its Purported Notice of Withdrawal (12-cv-00102, ECF No. 316); Defs.’ Reply. in Supp. of Defs.’ Mot. To Enforce the Jan. 7 and May 12, 2015 Stip. Disc. Orders Against Holzhauer Auto & Truck Sales, Inc. and to Strike Its Purported Notice of Withdrawal (12-cv-00102, ECF No. 329); Defs.’ Opp to Plaintiff Holzhauer Auto and Truck Sales, Inc.’s Motion to Be Dropped As a Named Plaintiff and Proposed Class Representative (12-cv-00102; ECF No. 358).

Defendants do not object to Beck's withdrawal as long as Beck complies with its obligations under the January 7 and May 12 Stipulated Discovery Orders.

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2015, I caused the foregoing **DEFENDANTS' OPPOSITION TO AUTO DEALER PLAINTIFF BECK MOTORS INC.'S MOTION TO BE DROPPED AS A NAMED PLAINTIFF AND PROPOSED CLASS REPRESENTATIVE** to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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